

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In re:

5171 CAMPBELLS LAND CO., INC.,

Debtor.

ROBERT S. BERNSTEIN, ESQ., Plan
Administrator,

Movant,

v.

No Respondents.

Bankruptcy Case No. 19-22715-CMB

Chapter 11

ORDER OF COURT

AND NOW, to wit, this ____ day of ____, 2021, after notice and opportunity for hearing, the Court having considered the *Motion for an Order (i) Approving Bid Procedures for Sale of the Debtor's Real Property; (ii) Authorizing and Scheduling an Auction; (iii) Scheduling a Hearing for the Approval of the Sale of Real Property Free and Clear of Liens; (iv) Approving Certain Deadlines and the Form, Manner, and Sufficiency of Notices; and (v) Granting Related Relief* (the "Bid Procedures Motion"), filed by Robert S. Bernstein, Esq. (the "Plan Administrator"), it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

1. The Bid Procedures Motion is approved.
2. The Sale Notice attached to the Motion as **Exhibit B** is approved. The Plan Administrator shall be permitted to modify the Sale Notice to include the relevant deadlines and hearing dates as set by the Court.
3. Each Party that submitted a Qualified Bid shall be invited to participate in an auction (the "Auction") that shall be conducted at the Sale Hearing. The Sale Hearing is currently is

scheduled to be held on _____, 2021 at _____ before Judge Carlota M. Böhm via Zoom, to conduct the Auction and consider the confirmation of the Sale to the successful bidder or any higher and better bidder.

4. The First National Bank of Pennsylvania's rights to credit bid on the Property shall be preserved.
5. The following Bid Procedures shall govern the Auction:

(a) Solicitation Process; Distribution of Bidding Procedures. The Plan Administrator shall distribute (i) the Sale Notice and (ii) these Bidding Procedures (as approved by the Court) as required in connection with the Bid Procedures Motion and as set forth in the Notice Procedures below. Further, the Plan Administrator shall distribute the Sale Motion and the Bidding Procedures to those parties the Plan Administrator determines may have or demonstrate an interest in acquiring the Property.

(b) Potential Bidders; Due Diligence. Upon the written request of a potential bidder, the amount of the highest Qualified Competing Bid (as defined herein) for the Property shall be provided by the Plan Administrator as of the date of the request. The Plan Administrator shall afford each potential bidder due diligence access to the Property, to the same extent as provided to Stalking Horse Bidder in the Agreement of Sale, except that the due diligence period for any potential bidder shall extend through 5:00 PM EST on the Bid Deadline (as defined herein).

(c) Qualified Bidders; Qualified Bids. In order to be eligible to bid on the Property at the Sale Hearing, each bidder, other than the Stalking Horse Bidder, who is deemed to be a Qualified Bidder and having submitted a Qualified Bid, must be a "Qualified Bidder," which is a bidder that has submitted a Qualified Competing Bid (as defined herein)². Within three (3) business days after the Plan Administrator receives from a potential bidder all of the materials required to be submitted pursuant to subparagraph (d)(i) below, the Plan Administrator shall make an initial determination, subject to final review, consideration and determination by the Court, whether a potential bidder is a Qualified Bidder and has submitted a Qualified Competing Bid. After such initial determination is made, and by the end of the third business day following receipt of the potential bid, the Plan Administrator will notify the potential bidder of the decision. Any bid that is determined by the Plan Administrator to be a Qualified Competing Bid (as defined below) shall be provided promptly to the Stalking Horse Bidder by the Plan Administrator within three business days after such determination is made.

(d) Submission of Bid. Unless otherwise agreed upon by the Plan Administrator, in order to be considered for status as a Qualified Bidder, a bidder must:

² For the avoidance of doubt, the Bank shall also be deemed a qualified bidder and shall not be required to submit the deposit to participate in the Auction.

(i) Deliver to the Plan Administrator (Robert S. Bernstein, Esquire, 707 Grant Street, Suite 2200, Gulf Tower, Pittsburgh, PA 15219 (email: rbernstein@bernsteinlaw.com)) so as to be received within sixty (60) days of the Court's entry of an order approving the Bid Procedures ("Bid Deadline"), a written offer for the Property at a price equal or exceeding the Minimum Overbid (as hereinafter defined) and accompanied by the following ("Qualified Competing Bid"):

(A) An executed version of the Agreement of Sale, modified so that (w) the Qualified Bidder shall be appropriately identified as the Buyer, (x) the Purchase Price thereunder shall be the Qualified Competing Bid of such Qualified Bidder; (y) any credit bid by a secured creditor that may be permitted by the Court shall nevertheless be paid in sufficient cash to pay, in addition to all costs required by the Bid Procedures Order and after the return of the Deposit to the Stalking Horse Bidder as provided in the Agreement of Sale, the maximum amount of the Break-Up Fee as an administrative expense (with any remaining balance of such maximum amount to be returned upon the Court's determination of the allowable Break-Up Fee), and (z) there shall be no Break-Up Fee except as provided for in this Motion in favor of the Stalking Horse Bidder, subject to final approval by the Court . In the event that the bidder submits an executed Agreement of Sale with any permitted changes to the form of Agreement of Sale as hereinabove provided, those terms must be noted in redline in the executed version of the Agreement of Sale submitted by the bidder;

(B) Proof, in a form satisfactory to the Plan Administrator, of the bidder's financial ability to consummate its offer to purchase the Property. **NO FINANCING CONTINGENCIES WILL BE PERMITTED;**

(C) To the Plan Administrator's satisfaction (i) fully disclose the identity of each individual or entity that will be bidding for the Property or otherwise participating in connection with the Transaction, and (ii) the terms of any such participation, and if an entity has been formed for the purpose of acquiring the Property, the parties that will bear liability for any breach of such entity;

(D) An earnest money deposit of \$25,000.00 ("Qualified Bidder Deposit") by cashier's or certified check (made payable to the Plan Administrator) or wire transfer of immediately available funds;

(E) A written acknowledgement by such Qualified Bidder that it agrees to the terms of the Bidding Procedures.

(ii) Submit a bid in the minimum amount of Nine Hundred Thousand Dollars and 00/100 (\$900,000.00) ("Minimum Overbid") to be considered.

(iii) Not request and waive any claim of the Qualified Bidder to any Break-Up Fee, or similar type of payment.

(e) Denial of “Qualified Bidder” Status to Non-Conforming Bids. Subject to final determination by the Court, at the Plan Administrator’s discretion, the Plan Administrator may decline to accept as Qualified Competing Bids any bids that do not substantially conform to the foregoing requirements and any other procedures set forth in the Bidding Procedures Order, provided that the bid in question equals or exceeds the Minimum Overbid. The Plan Administrator shall have the right to negotiate with any bidder with respect to clarification or enhancement of any bid. Any Qualified Bidder shall also have the right to challenge any bid, except the Stalking Horse Bidder’s Qualified Bid under the Agreement of Sale or as otherwise made in excess thereof in accordance with the terms hereof, as being designated a Qualified Bid by filing an Objection to Qualified Bidder Status with the Court prior to the Sale Hearing.

(f) Bid Deadline; Reporting of Qualified Competing Bids. All Qualified Competing Bids must be submitted to the Plan Administrator so as to be received not later than the Bid Deadline. If the Plan Administrator does not receive any Qualified Competing Bids by the Bid Deadline, Plan Administrator shall promptly report the same to the Stalking Horse Bidder and the Court.

(g) Participation in Auction; Successful Bidder. If one or more Qualified Competing Bids are received, an auction (“Auction”) will be conducted at the Sale Hearing via Zoom. Only a Qualified Bidder that has submitted a Qualified Competing Bid(s) will be eligible to participate in the Auction. The bidding at the Auction shall start at the Minimum Overbid. Competing bidders, including Stalking Horse Bidder, may submit bids for the Property in excess of the Minimum Overbid, provided that such bids are in increments of twenty-five thousand dollars and 00/100 (\$25,000.00) and are Qualified Competing Bids. The Court shall select the highest Qualified Competing Bid(s) (“Successful Bid”) from the Qualified Bidder(s) (“Successful Bidder”). The Auction shall be conducted

(h) Loss of Deposit. If the failure by the Successful Bidder to consummate the purchase is the result of such Successful Bidder’s breach of, or default or failure to perform under any Successful Bidder sale documents or the terms of these Bidding Procedures (such bidder being a “Defaulting Bidder”), such Defaulting Bidder’s Qualified Bidder Deposit shall be forfeited to the Plan Administrator and the Plan Administrator shall thereupon have the right to assert all rights and remedies provided under applicable law, including but not limited to, specific performance.

(i) Late Bids. A bid submitted after the Bid Deadline or that is not a Qualified Competing Bid will not be considered for any purpose unless an order of the Bankruptcy Court is entered directing that such bid be considered, and neither the Plan Administrator nor any other person will have any obligation to seek such an order from the Bankruptcy Court.

(j) Return of Deposit. Except as provided herein, all deposits shall be returned to each bidder not selected by the Plan Administrator as the Successful Bidder no later than five (5) business days following the substantial consummation of the sale to the Successful Bidder, except for the Back-up Bidder (as defined below).

(k) Back-Up Bidder. If an Auction is conducted, the party with the next highest and best Qualified Competing Bid, as determined by the Court, shall serve as a back-up bidder (“Back-Up Bidder”) and keep such bid open and irrevocable until the closing of the Sale transaction with the Successful Bidder. The Back-Up Bidder’s deposit will be returned by no later than the fifth (5th)

business day after the closing of the Sale transaction with the Successful Bidder. The Stalking Horse Bidder shall be deemed to be a Qualified Bidder for purposes of selecting the Back-Up Bidder, in accordance with the terms of the Agreement of Sale. Following the Sale Hearing, if the Successful Bidder fails to consummate an approved Sale because of (a) the failure of a condition precedent beyond the control of either the Plan Administrator or the Successful Bidder or (b) a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Plan Administrator will be authorized to consummate the Sale with the Back-Up Bidder without further Court order. If the sale is not concluded with a Successful Bidder, and there are no remaining Back-Up Bidders that are willing to consummate the sale of the Property shall be sold to the Stalking Horse Bidder as provided in the Agreement of Sale.

(l) First National Bank of Pennsylvania's Credit Bid. The First National Bank of Pennsylvania's rights to credit bid shall be preserved. In the event of such credit bid, it shall contain sufficient cash to pay the expenses of sale (including counsel fees and broker commission), as well as the Estate's share of any closing costs

6. If the Stalking Horse Bidder is not the Successful Bidder, the Plan Administrator shall be authorized to pay the Break-Up Fee of \$25,000.00 to the Stalking Horse Bidder without further order of Court.
7. The Court reserves the right to enter any other Order(s) as it deems appropriate associated with this Motion.

Chief Judge Carlota M. Böhm
United States Bankruptcy Court